

**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

November 30, 1993

IN REPLY REFER TO:
1800B3-EPD

Joseph Blanco
430 La Sila Court
Punta Gorda, FL 33950

Dear Mr. Blanco:

This is in reference to your letter dated August 26, 1993 on behalf of the citizens and cultural organizations located in Punta Gorda, Florida. Your letter requests special permission to operate a low power FM Station to serve Punta Gorda, Florida.¹

In your request you indicate that the proposed station will broadcast mostly classical music and news of the fine arts to the many retired and semi-retired citizens in Punta Gorda, Florida. You indicate that there are several factors that make it nearly impossible for you to qualify for a full service station. First, the minimum effective radiated power of 100 watts is far too much for the desired listening area. Second, there are no available channels in the reserved education, non-commercial part of the FM band. Third, to petition the Commission for a commercial channel would require specialized legal services and a great deal of time which comes at a high price. Additionally, you indicate that you have investigated alternative methods such as operating under Part 15 of the FCC rules and over the local cable system. You indicate that operating under Part 15 will not reach the desired audience and the local cable system does not have facilities for FM origination.

All broadcast services are limited by the presence of stations in other localities operating on the same channel or adjacent channels. Given the nature of radio signals, the Commission has established specific spacing and interference standards which result in defined protected areas for each station. These protected areas are intended to be large enough to provide reasonable service, but not so large as to unreasonably preclude the establishment of radio service in other cities or communities. New FM stations in the commercial band are allocated by the FCC through a petition for rulemaking to amend the FM Table of Allotments. If the FCC approves the request, the channel would be added to the Table of Allotments. A "filing window" would be announced so that all interested parties may file an application. Applications filed for the allotment must meet the technical standards set forth in the Commission's Rules, one of which provides for commercial applicants to meet minimum power requirements (100 watts). If multiple applications are filed for the allotment, the acceptable applications will be designated for a comparative hearing.

You propose to operate the low power FM station on a commercial frequency (104.5 MHz). Our records indicate that a new FM station to serve Solana, Florida, Station WMMY(FM), has been authorized use of an adjacent frequency (104.9 MHz) from a transmitter site located just 4 kilometers northeast of Punta Gorda. Moreover, an FM station to serve Cape Coral, Florida, Station WXKB(FM), has been authorized use of another adjacent frequency (103.9 MHz) to the southeast of Punta Gorda. Both stations' signals will provide 100 percent service to the

¹ You propose to operate with 1 watt ERP and 12 meters HAAT on a frequency of 104.5 MHz.

Punta Gorda. Accordingly, under the Commission's spacing and interference standards, the requested frequency could not be authorized because it would cause interference to WMMY(FM) and WXXB (FM) .

Our records also indicate that there are 3 non-commercial and 10 commercial FM stations that currently serve Punta Gorda with an adequate signal. Additionally, our records indicate that there are 6 other FM stations that have service areas just on the fringe of Punta Gorda. Furthermore, numerous FM stations in the surrounding area have pending requests before the Commission to improve their service areas which may also provide additional service to Punta Gorda. There are also numerous AM stations that provide an adequate signal to Punta Gorda.

As to the non-commercial band, grant of the request would undermine that Commission's policy objective of efficient channel usage in a scarce spectrum. The Commission in the Second Report and Order in Docket No. 20735, released September 1, 1978, decided that no additional low power FM applications would be accepted for filing that did not meet the minimum Class A power level of 100 watts. In reaching its decision the Commission stated the following:

Having balanced the competing equities, it has become clear that these low power operations cannot be permitted to function in a manner which defeats the opportunity for other more efficient operations which could serve larger areas, and bring effective noncommercial educational radio service to many who now lack it.

Please be aware that the Commission does not scrutinize or regulate entertainment programming formats, nor does it take programming format into consideration in making its licensing decisions. In 1977, the Commission issued a Policy Statement in which it concluded that review of program formats was not required by the Communications Act, would not benefit the public, and would deter innovation, as well as impose substantial administrative burdens on the Commission. Entertainment Formats, 60 FCC 2d 858 (1979), reconsideration denied, 66 FCC 2d 78 (1977). The Supreme Court of the United States has upheld this policy, stating that "the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters..." WNCN Listeners Guild v. FCC, 450 U.S. 582 (1981). See also, Riverside Broadcasting Co., Inc., 53 RR 2d 1154, 1157 (1983), reconsideration denied, 56 RR 2d 618 (1984).

We encourage you and other concerned citizens to let the management of area stations know your views, so that they will have an opportunity to take those views into account in making programming and news decisions. Thank you for your interest in the FM radio service.

Sincerely,

Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau

cc: EIC, Tampa, FL